many they have proved. For these reasons, it seems to me abundantly clear that the charge wholly fails in its object as pleading, and I certainly do not think it complies with Section 154 of the Criminal Procedure Code. The offence defined is as vague as treason. When the words of the law constituting an offence are a mere description of an act by reference to its purpose or tendency, leaving it open to the prosecution to allege almost innumerable acts done with such purpose (in this case as acts of assisting or as acts tending to prove assisting), and are not definition of an act, then in order to shew the manner in which the offence was committed, it seems to me the prosecution must set out the overt acts they intend to prove. The Federal Counsel argued that the appellants were represented by Counsel in the Court below and did not object to the form of the charge. It is certainly no part of the prisoner's duty to perfect the charge for the prosecution, nor is it clear at what point he suggests the charge became embarrassing and this objection should have been taken. Had the prosecution only sought to prove one overt act the charge might not have been so faulty. The different statements of the witnesses might have been treated as contradictions of one another. One is left in the dark as to whether these witnesses are making conflicting statements as to one event or independent statements as to separate events. I do not think there is anything in counsel's point. Defects in an indictment which might have been objected to have been successfully made grounds of appeal.

The Federal Counsel also referred to Section 421 and 422 of the Criminal Procedure Code. Although the charge, as a charge, is useless, I cannot say there is no charge under Section 421. The powers conferred on the Courts under Section 422 have frequently been considered. It seems to me that the defence, whether it objected or not, must have been seriously embarrassed and it is manifest on the record that the learned District Judge was misled. Many appeals have been allowed in England on the ground of duplicity in the indictment. Although, as has been pointed out, this charge seems to relate to possibly six separate acts, I do not think that ground can be urged against this charge as the offence charged seems to be a continuous one. In other cases of objection to the form of the charge, these powers have generally, if not always, been used. Where, however, the defect is not purely formal but may affect the merits of the charge, an objection based on such a defect has been made the ground for allowing an appeal, *Rex v. Edwards*[1], *Rex v. Johnson*[2].

Mr. Mahendran objected that the evidence of these accomplices was not corroborated. There is no substantial corroboration, but even were they accomplices, this would not prevent the learned District Judge from convicting on their evidence. Mr. Mahendran does not base his argument on the provisions of the local law, to be found in Sections 114(b) and 133 of the Evidence Enactment, and implicity admits that these would enable the learned District Judge in a proper case to act on such evidence. He relies on the English practice, and the English practice is that of a Judge conducting a trial with a jury, and the rule to which he refers is that the Judge should warn the jury against convicting on the uncorroborated evidence of an accomplice. The meaning and extent of that rule can be seen from the consequences. If the Judge does so warn the jury, and the jury convicts, the convictions cannot be attacked whether there was corroborating evidence or not. Where, on the other hand, he fails to direct them the Appeal Court does not automatically quash the conviction, which would be the consequence, were it a matter of a positive rule of law and not a mere rule of practice, but examines the evidence, and if there be corroborative evidence they will, in most cases, let the conviction stand. In this case, it is clear, that danger was present in the learned District Judge's mind and he took proper precautions subject to the state in which the case was put to him to satisfy himself on this point.

Mr. Mahendran also objected to an alleged sentence recommending the prisoner for banishment. He states that such a recommendation formed part of the oral judgment. It is, of course, quite improper. The District Judge has no such powers. There is, however, no record of any such sentence and I cannot, therefore, deal with the matter as if there were.

As I think the defence was embarrassed and the Court misled by the defective charge, the conviction and sentence cannot stand. I have had occasion to point out before, the Criminal Procedure Code does not enable me to go behind the conviction and quash the charge. A re-trial is, therefore, useless. The accused are acquitted and discharged.

Conviction Quashed.

SAW SHONG HAI v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J., M.U., Murray-Aynsley, C.J., S'pore, Bostock Hill, J.) Sept. 24, 1947]
[K.L. — Cr. App. No. 106 of 1947]

Penal Code, S. 302 — Summing up — Evidence in favour of the accused should be put to the assessors — Misdirection.

In this case three witnesses spoke of the accused having a revolver, but only one of them gave evidence of his shooting with it. In summing up to the assessors the learned trial Judge referred to "the evidence of the three witnesses of the actual shooting."

Held, that this constituted a misdirection.

In summing up, the evidence in favour of the accused must be put to the Assessors. In this case the learned trial Judge used the phrase "I do not propose to comment on the evidence of the two Japanese witnesses."

Held, that this constituted a misdirection.

CRIMINAL APPEAL.

C. Mills for the Appellant.

C. H. Whitton (Crown Counsel) for the Respondent.

The Judgment of the Court of Appeal was given by :—

Willan, C. J. : — The appellant was charged with committing the murder of one Lim Yoke Chu on the 31st day of March, 1944.

The appellant was working for the Japanese police during the occupation, and, on the day in question, went with a party of police to effect the arrest of certain persons in a house near Rawang. This party of police arrived at the house about 6 a.m. on a misty morning.

The question of visibility was raised in this appeal and was an important matter as regards the identification of the appellant.

The case against the appellant centres on the evidence of the third prosecution witness, Chan Choy, who gave evidence that he saw the appellant shoot the deceased with a revolver. Two other prosecution witnesses gave evidence that they saw the appellant at the scene carrying a revolver. In addition, the third prosecution witness gave evidence that the deceased made a dying declaration that it was the appellant who had shot him.

The appellant, in his defence, admitted he was in the party of police at the scene and that there had been some shooting. He denied that he had shot and killed the deceased. He called two witnesses in his defence, the second of whom, a Sergeant Major of the Japanese Kempeitai, stated that he thought the appellant was with him at the time of the shooting and that whilst the appellant was so with him he, the appellant, did not fire a shot.

In summing up to the Assessors the learned trial Judge said : — "the evidence of the three witnesses of the actual shooting". As stated above there was only one witness to the actual shooting i.e. the third prosecution witness.

On the question of visibility, which as already stated, was an important matter, he correctly put to the Assessors the following extract from the evidence of the fourth prosecution witness : — "There was not sufficient light to see anything". But the learned trial Judge added, by way of comment : — "I think he meant he could not see anything in-doors". We cannot find any evidence to support that comment.

Lastly, we can find nowhere in the summing-up that the learned trial Judge put to the Assessors the evidence of the Japanese Sergeant Major mentioned above. This was evidence in favour of the appellant and should have been put to the Assessors. The learned trial Judge dismissed that evidence and the evidence of the first defence witness, another Japanese, in the words : — "I do not propose to comment on the evidence of the two Japanese witnesses".

In our view, all these three matters amount to misdirection of the Assessors, and on that ground we allowed the appeal and quashed the conviction and sentence.

Appeal Allowed.
Conviction and Sentence Quashed.

PUBLIC PROSECUTOR v. WEE SWEE SIANG.

[Cr. App. Juris. (Callow, J.) March 19, 1948]
[Malacca — Misc. Application No. 1 of 1948]

Criminal Procedure Code, s. 395 — Application for bail — Principles on which the Court should act.

The Court has a discretion in granting bail or to refuse it and should consider all the circumstances of the case. The Court cannot however go into the alleged facts to consider whether the accused should be properly charged under one section or another. Where the accused is charged with an offence under s. 395 of the Penal Code and it is not shown that the refusal to grant bail would prejudice the accused in the preparation of his defence, bail can properly be refused.

Case referred to : —

(1) *R. v. Hutchinson,* I.L.R. 53 All. at p. 938.

MAGISTRATE'S APPEAL.

J. Kilner, Deputy Public Prosecutor, for the Public Prosecutor.

W. H. Salt for the Applicant.

Callow, J. : — This is an application for bail made in accordance with the provisions of section 395 of the Criminal Procedure Code.

Mr. Salt appeared for the accused and was heard. Mr. Kilner, the Deputy Public Prosecutor, opposed the application.